

ANDRZEJ KUSY v. CITY OF NORWICH et al.

AC 41721

Judicial District of New London

Negligence; Governmental Immunity; Whether Snow and Ice Removal a Discretionary or a Ministerial Duty; Whether Plaintiff Delivery Driver an Identifiable Person under Identifiable Person-Imminent Harm Exception. The plaintiff, a delivery driver for Guida Dairy, delivered milk to Kelly Middle School in Norwich twice a week. On a February day following a snowstorm, the plaintiff was injured when, while making a delivery to the school, he slipped and fell as he pulled a hand truck loaded with cases of milk up an icy ramp to a loading dock. The plaintiff sued the school, school employees and the city of Norwich, claiming that the defendants were negligent in failing to treat the icy condition or remove the snow and ice from the ramp following the storm. The defendants filed a motion for summary judgment, arguing that they were entitled to judgment in their favor under the doctrine of governmental immunity, which provides that municipal employees cannot be held liable for negligence if their actions were discretionary—that is, requiring the exercise of some judgment—rather than ministerial or mandatory. On the other hand, municipal employees are not immune from liability for their ministerial acts, which are defined as acts performed in a prescribed manner and without the exercise of judgment or discretion. The defendants also argued that the plaintiff could not prevail under the "identifiable person-imminent harm" exception to governmental immunity, which provides that a municipal employee may be liable for discretionary acts when it is apparent to the employee that his or her failure to act would likely subject an identifiable person to imminent harm. The trial court rendered judgment in favor of the defendants, ruling that their actions were discretionary and not ministerial. The court noted that, generally, the exercise of duties involving inspection, maintenance and repair of hazards are considered discretionary acts entitled to governmental immunity and that, in *Beach v. Regional School District Number 13*, the Appellate Court ruled that, absent some established policy or directive making it a ministerial duty, municipal employees' decisions concerning the removal of snow and ice are discretionary. The trial court noted that the defendants presented evidence showing that they had no policy or directive in place concerning snow and ice removal and instead that decisions concerning snow and ice were left to the discretion of town employees. The trial court also concluded that the plaintiff was not an identifiable person under the identifiable person-imminent harm exception, noting that Connecticut law has so far identified only schoolchildren as foreseeable victims in the school setting, reasoning that they are required to be present during school hours, and that this state's courts have declined to extend the exception to others present at a school during school hours. The plaintiff appeals, claiming that the trial court wrongly decided as a matter of law that, in the absence of any express written policy or directive concerning snow removal, the decision as to when to clear the snow and ice from the ramp was a discretionary act such that the defendants enjoyed governmental immunity from the plaintiff's claims of negligence. The plaintiff also contends that the trial court wrongly ruled that he was not an identifiable person under the identifiable person-imminent harm exception where he made regular deliveries to the school and where he argues that he was obligated to be at the school by virtue of the contract between the town and his employer.